

NOV 29 2018

Clerk, U.S. Courts  
District Of Montana  
Missoula DivisionIN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

TYRONE EVERETT PAYNE,

Petitioner,

vs.

PAT MCTIGHE; ATTORNEY  
GENERAL OF THE STATE OF  
MONTANA,

Respondent.

CV 18-120-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendations on October 10, 2018, recommending that the Court deny as moot Payne's petition brought under 28 U.S.C. § 2254 and deny a certificate of appealability. (Doc. 5.) Payne failed to timely object to the Findings and Recommendations,<sup>1</sup> and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews for clear error those findings and recommendations to which no party objects. *See Thomas v. Arn*, 474 U.S. 140,

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<sup>1</sup> It appears that Payne has not been effectively served with a copy of the Findings and Recommendations. Payne has not provided a current mailing address despite notification that failure to do so may result in dismissal of his action. Accordingly, the Court cannot excuse the failure to object.

149–53 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been made.” *Wash. Mut., Inc. v. United States*, 856 F.3d 711, 721 (9th Cir. 2017) (citation omitted).

Having reviewed the Findings and Recommendation (Doc. 5), the Court finds no clear error in Judge Lynch’s recommendation that Payne’s petition should be denied. Through his habeas petition, Payne challenged the revocation of his parole. Payne fully discharged his revocation sentence and was released without conditions, rendering his petition moot. *See Spencer v. Kemna*, 523 U.S. 1, 8–16.

Nor is there clear error in Judge Lynch’s recommendation that the Court deny a certificate of appealability. Payne has not made “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

Accordingly, IT IS ORDERED:

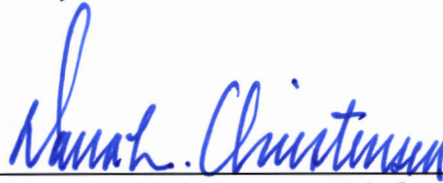
(1) Judge Lynch’s Findings and Recommendations (Doc. 5) are ADOPTED IN FULL;

(2) Payne’s Petition (Doc. 1) is DENIED as moot;

(3) A certificate of appealability is DENIED; and

(4) The Clerk of Court shall enter by separate document a judgment in favor of Respondents and close this case.

DATED this 29<sup>th</sup> day of November, 2018.



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Dana L. Christensen, Chief Judge  
United States District Court